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CONTENTS

REPORTS

NOTES OF THE WEEK

Nagging and Cruelty

The necessity for considering the question of injury or apprehending injury to health in relation to allegations of cruelty was re-affirmed by the Court of Appeal in *Jillings* v. *Jillings* (*The Times*, December 11). Before Barnard, J., the husband had petitioned for divorce on the ground of cruelty by his wife. The learned Judge had found that the wife had persistently nagged her husband but that her conduct did not amount to cruelty because there was no satisfactory evidence that it had injured her husband's health or caused reasonable apprehension of injury to health. He therefore dismissed the petition, and the husband appealed.

In the course of his judgment, Hodson, L.J., referred to the fact that the husband had left his wife three times because of her nagging conduct, and finally left her for good. The crucial finding of the Judge was that at no stage was there any satisfactory evidence that the husband's health had been injured, or to satisfy the test that there had been a reasonable apprehension of injury. In questions of cruelty it was necessary to apply an objective test, and this the Judge had done; where conduct over a period of years was relied on it was difficult to prove to the satisfaction of the Court that there was reasonable apprehension where actual injury was not proved. The appeal would be dismissed.

Interim Orders and Final Orders

In an article at 111 J.P.N. 688 we discussed the question whether an interim order under the Summary Jurisdiction (Separation and Maintenance) Acts could be made after the court had come to a decision that the matter of the complaint had been proved. The difficulty was to reconcile the decisions in *Fulker* v. *Fulker* (1936) 101 J.P. 8 and *Higgs* v. *Higgs* (1941) 105 J.P. 119.

In *Smith* v. *Smith*, which came before the Divisional Court on November 17, Lord Merriman, P., referred to confusion between the function of making an interim order and a final order. The Court had been referred to *Higgs* v. *Higgs, supra*, in which he had been reported as saying that magistrates could come to a determination in the first instance. He thought he had been emphasizing a somewhat different point, if he went too far he could only repent.

Collingwood, J., said it was quite clear from *Fulker* v. *Fulker, supra*, that an interim order could only be made pending a final determination.

Thus it seems clear that *Fulker* v. *Fulker* is the case that must be followed.

Contents of an Interim Order

Section 6 of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, empowers a magistrates' court which adjourns an application for a maintenance order to make an interim order for the maintenance of the wife and any children in her custody. The section does not state that an interim order may include a provision giving custody to the wife.

In *Smith* v. *Smith, supra*, the justices when granting an adjournment, made an interim order after having adjudged the complaint to be true. The printed form of interim order contained a non-cohabitation clause. Lord Merriman observed that anything less appropriate to an adjournment to effect a reconciliation could not be imagined. The Court of Appeal had said that a non-cohabitation clause should only be put in where it was needed to protect the wife; the form should be left blank, the non-cohabitation clause being written in when necessary. There does not appear to have been any comment about the insertion in the interim order of the provision about the custody of the children.

An Outside Chance

In *The Probation Service*, after a reference to professional criminals, who appear to have consciously chosen a life of crime and so become persistent offenders, the author goes on: "Intellectually they know right from wrong, and are aware of the consequences of their actions, but to them their prison sentence is merely an occupational hazard, and they have no desire to change a way of life with which they are satisfied. As a general rule such people are unlikely to accept or be able

to use case-work help, but there is always the possibility that at some point in their passage through life some new factor or circumstance may touch them and awaken, even tardily, a desire to be different. The probation officer must always be alert to this possibility. Indeed, experiments by the higher courts in the use of probation for 'old lags' who have perhaps reached the last possible turning-point in a criminal career, have proved in some cases surprisingly successful."

The Court of Criminal Appeal dealt with a case which, it may be hoped, will prove to be an example of such a change of attitude. The appellant in *R.* v. *Bestford* (*The Times,* December 9) had been convicted at quarter sessions of breaking and entering and stealing, and had asked to have five other offences taken into consideration. He had 17 previous convictions, and his sentences were said to have ranged from a fine to eight years' preventive detention. After careful consideration, quarter sessions felt unable to take the risk of making a probation order and passed sentence of 10 years' preventive detention.

The Lord Chief Justice, in delivering judgment, described the case as extraordinarily difficult. He referred to the fact that after release from prison the man had worked well and had co-operated with the probation officer. The probation officer was of opinion that if he was treated leniently there was an outside chance that the prisoner might go straight. The Court was going to take the risk of that outside chance and put him on probation for three years. Lord Parker added that he thought the man realized that this was his last chance.

It is to be noted that there was no criticism of the court of quarter sessions, and perhaps it was for the best that the man had actually been sentenced to preventive detention and realized the seriousness of his position while awaiting the result of his appeal. Had he been put on probation by quarter sessions, he might not have been equally impressed that this was indeed his last chance.

Presumption in Favour of Child

The presumption that a child under the age of 14 is incapable of criminal intention is so constantly rebutted by evidence that it is sometimes in danger of being overlooked. At times it becomes of unusual importance and gives a court a certain amount of difficulty to decide whether or not it has been rebutted.

In *The Times* of December 16 there was an account of a case before a juvenile court in which two 12 year old boys were charged with malicious damage, and which resulted in a dismissal. It appeared that the boys got on to a bulldozer, moved some levers and caused it to start. Finding they could not stop it, they jumped off and the bulldozer ran away and crashed into a bungalow, causing damage stated to amount to £250. The chairman of the bench said the boys were too young to realize the consequences of what they had done.

The presumption that a person intends the natural or probable consequences of his acts is reasonable and practical, but it can be rebutted, and when the defendant is a child the court has to consider carefully how far it can properly be applied, with due regard to the presumption that the child is not capable of malicious intention.

In the present case, the amount of the damage was most regrettable, but that had nothing to do with the question of the responsibility of the children before the criminal law.

Two Cases on Corrective Training

In *R.* v. *Cox* (*The Times,* December 16) the appellant appealed against a sentence of three years' corrective training passed on him by quarter sessions. The short point turned upon the construction of s. 8 (5) of the Criminal Justice Act, 1948.

The appellant had been convicted in June of house-breaking and put on probation for three years. He was not at that time liable to be sentenced to corrective training. During the period of probation he was convicted twice of larceny and sentenced to three months', and to six months', imprisonment. Thereafter he was brought back to quarter sessions under the provisions of s. 8, *supra,* and sentenced to corrective training.

The Lord Chief Justice, delivering the judgment of the Court of Criminal Appeal, dismissing the appeal, said the appellant became eligible for corrective training by reason of the two subsequent convictions. The point was entirely covered by s. 8 (5) which provided: "Where it is proved to the satisfaction of the court by which a probation order . . . was made . . . that the person in whose case that order was made has been convicted and dealt with in respect of an offence committed during the probation period . . . the court could deal with him [as] if he had just been convicted by or before that court of that offence."

R. v. *Capper* (*The Times,* December 16) turned upon the question of suitability, not eligibility for corrective training. The appellant, aged 31, had been sentenced by quarter sessions to three years' corrective training, and he had, in the words of the Lord Chief Justice, a shocking record with 16 previous convictions. The Prison Commissioners considered that he would not profit from further training and was not suitable for corrective training. The chairman of quarter sessions said that in spite of this adverse report the court hoped that the authorities would, if they could, do something to help the appellant by training him properly, and passed the sentence of three years' corrective training.

Lord Parker referred to previous observations of the Court of Criminal Appeal about such sentences being passed in spite of an adverse report by the Prison Commissioners. The present appellant seemed so advanced in crime as to be unlikely to benefit by corrective training, and a sentence of three years' imprisonment would be substituted.

Prison Buildings

In *The Architects' Journal* for December 4, an editorial examines the question of prison buildings from the point of view of architects, and states that it is painfully clear that not nearly enough thinking has been done about what today's prisons should be like. The criticism is made that it is not clear enough whose is the responsibility. The Prison Commissioners, the Home Office and the Treasury are all interested, but the design and construction of new prisons are the responsibility of the Ministry of Works, which is not responsible either for prison administration or for the expenditure. Why, it is asked, should we expect this incoherent administrative and financial set-up to do better than Everthorpe? The article goes on to suggest that if the Home Secretary wants to get value for money out of the programme he has announced and to build prisons which are not already long out of date before they are opened he will address his mind first of all to this problem of organization. Architects, says the article, produce the best results when in direct contact with their clients. Obviously,

therefore, one authority—the Prison Commissioners—must be solely responsible for the programming, design, and execution of prison buildings.

A New Prison

The same issue of *The Architects' Journal* contains a well illustrated article on the new Everthorpe prison in Yorkshire, the first, apart from open prisons, to be built in this country since 1910. The author is stated to be an architect and a student of penology.

After tracing the development of ideas about prison construction and the way in which those ideas were put into practice in this country and elsewhere, the article points out that the essential features of the Pentonville plan type, modified only in minor ways, are still the norm. Meanwhile, especially in the last 50 years an entirely new set of beliefs relating to the function of imprisonment has been growing up, and today the dominant idea is that of rehabilitation. There exists today a widely accepted philosophy of penology and a method of treatment which is fundamentally different from that which informed the building programme of the 1840's and one which is being actively reflected in the practical organization and day-to-day running of contemporary prisons.

Everthorpe Hall, it is stated, is designed as a security training prison, although it is at present being used as a borstal institution because of present needs. It is meant to accommodate 300 "tough" prisoners, and of the total contract price of just over £600,000, an 18 *ft.* wall is said to account for £100,000. "It is impossible not to feel that a pre-occupation with this kind of Maginot Line security has pervaded some other thinking that underlines this new prison design." There is a marked improvement upon older methods in the lighting of the central hall by the use of glass barrel vaulting and of the nave and transept feature windows at middle and ends. As to the cells, the writer suggests that it is not certain that the type of cell (10 *ft.* long by seven *ft.* wide by about seven *ft.* six *ins.* high) has the right to survive. It might be, for example, that some provision could best be in the form of dormitories. There is also the question of the division of the prison into basic units which some authorities consider too large At Everthorpe Hall each wing of the cell block contains 77 cells in three floors and this operates as a unit with one association room on the ground floor.

Everthorpe Hall maintains the system of the sanitary annexe on each floor. This means that during the night the only way to reach the lavatory is to call a duty officer by ringing a bell. For some time, it is stated, prisons in the United States and elsewhere abroad have overcome this difficulty by providing every individual cell with a washbasin and a w.c. At Everthorpe Hall the sanitary accommodation in the annexe is ample, and the only criticism is based on the suggestion that it might be better to have it in each cell.

Evidently there is much to approve in the new prison, and the article in *The Architects' Journal* contains no criticism that is not constructive.

"Danger money" for Driving Examiners

We have written before about the difficulties encountered by driving examiners when those whom they are testing either express their dissatisfaction with the examiner's decision by using some form of violence or abuse or, alternatively, seek to influence the result of the test by the offer of a bribe.

The most recent example which has come to our notice is one in which an examiner was butted over the eye by a dissatisfied learner who also aimed a kick at the examiner. The latter suffered a cut over his eye. He was not even the examiner who had been concerned in testing the learner. The facts were that the learner, a motor-cyclist, failed his test and was abusive to the examiner. He went later to the Ministry of Transport headquarters, saw the same examiner and was again abusive. Another examiner thereupon asked him to leave and it was then that the learner, who was wearing a crash helmet, assaulted this second examiner in the way described. He pleaded guilty to a charge of an assault occassioning actual bodily harm and was perhaps fortunate only to be fined £5 and ordered to pay £5 5*s.* costs. It is quite intolerable that disappointed learner drivers should behave in this way and it is to be hoped that courts before whom such charges are brought will treat them with the seriousness which they deserve in order suitably to punish those who so offend and to discourage others from committing similar offences.

The case we have referred to was reported in the *Liverpool Daily Post* of November 22.

Housing Rents—Too High or Too Low?

County councils apart, housing is the most important service undertaken by most authorities both from the human and the financial angles. Naturally therefore housing is news and recently a number of facets of the subject have been reported in the press.

The *London Evening News* reported on December 5, that the East Barnet Tenants' Association are pressing the council to abolish rent rebates. The Association claim that the rebate scheme is open to abuse and creates a bad community spirit: their chairman, Mr. C. H. Wilkins, said that 18 out of every 100 tenants are being subsidized by the other 82 and that if it were abolished present rent increases of up to 11*s.* a week now being implemented by stages could be reduced by 4*s.* 6*d.* a week. He and the Association strongly urge that the cost of rent assistance to hardship cases, particularly widows, should not be borne by council tenants alone.

The division of liability between ratepayers and tenants is always a difficult problem. The *Manchester Guardian* of November 26 reports that Lewisham borough council, where a differential rents scheme operates, estimates that by March, 1960, outgoings on its houses will exceed rent income by £73,000 a year. This would necessitate raising rents by 20 *per cent.* if the tenants were to be required to meet the whole deficiency. As, however, there will be no deficit at all until the end of 1958 and the full figure of £73,000 will only be reached gradually by 1960, the Lewisham housing committee, who feel that the major rise in outgoings is due to Government policy and are concerned about growing possibilities of unemployment, have decided not to make any change in rents at present.

The *Scotsman* reports two items of housing news from north of the border which are of general interest. From Edinburgh Bailie A. Brechan, opening a building exhibition, said that people living in multi-storey flats are falling into rent arrears more than any other council house dwellers and that local authorities are finding difficulty in making the flats self-supporting. This position is not by any means universal: tenants are ready to pay inclusive weekly rents of £3 and over.

The second matter was also from Edinburgh. Bailie J. Chalmers-Brown, alarmed at the cost of family houses (which he is reported as saying cost the Edinburgh ratepayers £600,000 last

year) and at the failure to provide homes for single women, urged that changes should be made. He argued that subsidies from rates should be restricted to those justly in need: he also suggested that each wage-earner living in a corporation house should pay 5*s*. a week rent in addition to the normal rent paid by the tenants and the money be used to provide dwellings for single women for whom, said the Bailie, nothing had so far been done by the Edinburgh corporation. This kind of plus differential has superficial attractions but serious disadvantages: we cannot imagine that it is likely to be widely adopted.

The British Council

The Government is sometimes criticized for giving so much money to the British Council for its overseas services. But recently the more general criticism has been that its funds are quite inadequate for the work it can do especially in the teaching of English and in the supply of books in other countries. It is pointed out in the recently issued annual report that with about £170,000 as its total expenditure on print in 1958–59 it is not able to do much more than provide for serious professional students. This it does in some 65 countries. No critic can, however, suggest that the council is not doing very good work for visitors and students from overseas to this country. As the Prime Minister said recently more people come to be trained in Britain than to any other land. The report shows what can be done by the council in the field of education. For instance a director-general of education from a Middle Eastern state spent six weeks here studying many aspects of education. The educational system in his country was to be expanded and he had decided by the end of his visit that the British model was most suitable. As a result a chief education officer of a British education authority was invited to go out to advise on educational organization and teacher training. Several senior officials from the country's ministry of education toured the United Kingdom. A second British expert travelled out to assess the technical educational requirements; a study tour of Britain was arranged for headmasters and headmistresses; negotiations were started for the recruitment of British staff for certain key educational posts and finally the Minister of Education himself came as the guest of the council.

An important activity of the council each year is the arrangement of short specialist courses, summer schools and study tours. In the recent past several study tours have been arranged for groups from the U.S.S.R. and from Poland. The subjects included engineering education and town planning.

In describing visits overseas organized by the council it is mentioned that a former vice chancellor of Birmingham University and a chief education officer carried out an advisory visit to Burma at the request of the Burmese Government. They were asked to advise a committee which had been set up under the chairmanship of the Burmese Prime Minister to examine, review and report on the state of education in the country.

THE TRANSFER OF "THE SUPPER HOUR CERTIFICATE"

By C. W. L. JERVIS

The question has arisen whether a certificate granted by the licensing justices under s. 104 of the Licensing Act, 1953, attaches to the premises in respect of which it is issued or whether it is vested *in personam* in the licensee (or secretary of a registered club) in such a manner as from time to time to require transfer when the ownership or occupation of the premises passes to another.

There is much to be said for the former view. The section places emphasis upon the premises. The justices need be satisfied upon two points only, both matters pertaining to the premises, and they are prohibited from taking any other matters into account (*R.* v. *Spelthorne JJ., ex parte Turpin* (1926) 90 J.P. 155). The identity or reputation of the licensee or secretary appears to be irrelevant, no doubt because the certificate can be granted only to an established licensee or registered club secretary. Once the justices have granted their certificate, the section applies to the premises "from the day that the holder of the licence.....or the secretary.....applies the section to the premises until the day he terminates the application of the section to the premises." A notice has to be "affixed in some conspicuous place in the premises.....to the effect that the provisions of this section apply to the premises." The form of certificate (No. 4) in the Licensing Rules, 1921, is addressed to nobody. It merely certifies the satisfaction of the licensing justices as to the matters required by s. 104 (1). No machinery can be found in the Act or Rules for the transfer of such a certificate. Indeed, s. 104 appears to contemplate its continued existence until someone takes steps "to terminate the application of the section to the premises." This can only be done at some session of the general annual licensing meeting (s. 105) and special arrangements are made in the rules to apply the provisions of s. 11 to any application to terminate the certificate.

It is therefore submitted that the former view is the one which fits more neatly into the existing licensing structure.

A further matter perhaps of more than mere academic interest, is the effect upon the certificate of the loss of the licence in respect of the premises or the striking from the register of clubs of the club occupying the premises in respect of which the certificate was granted.

Clearly the certificate is of no effect when the sale or supply of alcohol at the premises has become illegal. But it is submitted that it is not destroyed: it is merely in abeyance and revived and operative as soon as the sale or supply of alcohol again becomes lawful, whether there be a new licence and a new licensee or a new club and new secretary. In this respect the club has the advantage over the licensed premises: the former may be struck off the register at a time when the certificate cannot be revoked; the latter are likely only to lose a licence at the brewster sessions when the certificate may simultaneously be revoked if the police have given the proper notices.

FILMS IN THE COURTS

By A POLICE CORRESPONDENT

The increasing extent to which films are used in education, training, and propaganda of all kinds, periodically prompts the question of why this medium is not more generally used in evidence ?

There are, of course, occasional examples of films being used in the courts, the latest being the exhibition of the film showing yarn manufacturing processes to the Restrictive Practices Court, but generally speaking it appears that this aid to judicial administration is strangely neglected.

That may perhaps appear a rather presumptuous view in a journal such as this, so perhaps it should be explained that although not qualified to offer authoritative opinion on legal principles, the writer has had many years experience in the police use of 16 m.m. films for propaganda in regard to road safety, recruiting, crime prevention, and the training of police and civil defence workers.

These displays were often given at short notice and under difficult conditions, such as in class rooms, church halls, marquees, clubs, offices, and even in the open air, so these notes are not offered without some idea of the practical problems involved in setting up film apparatus, blacking-out, etc., in a court.

These can, however, be adequately handled by a competent projectionist without disruption of the normal routine or dignity of the court and with little expense beyond that of providing window curtains opaque enough to restrict a certain amount of daylight. Complete darkness is obviously impracticable, but it is quite possible to show good pictures on a normal-type screen while retaining sufficient illumination to allow normal freedom of movement and the essential supervision of persons present.

It is also possible by using a transparent screen on which the film is projected from the rear, to exhibit films satisfactorily in broad daylight, which, of course, has obvious advantages in a court room.

The type of projection apparatus for this purpose is exempt from the normal restrictions as only safety film is used and the amount of heat, fumes and noise is insignificant in comparison with commercial apparatus.

It may be added for the benefit of those who have doubts about " amateur projection " that the 16 m.m. industry has proved itself beyond all doubt in entertainment, educational, industrial, commercial and scientific circles, and there is no reason whatever why films in this size should not be just as reliable and as well produced as those of the commercial cinema.

So far as the law is concerned, however, we have to look to other countries—especially America—for confirmation of their usefulness. New York, Denver, Washington, Pittsburgh, Philadelphia and Los Angeles are among the larger police forces which are making use of films for all kinds of training and propaganda, and also for obtaining evidence.

Incidentally, it has been found that pictures in colour assume added importance in a community of mixed races. An epidemic of larceny from motor cars in Cleveland, Ohio, was recently dealt with by shadowing suspects and filming them as they broke into parked cars, and the same force was successful in obtaining pictures of bank robbers at work by installing a secret automatic camera in a bank likely to be attacked.

Although they had to wait 12 months for results, the police eventually obtained excellent pictures of one man and two women raiders which were shown to the public on television, as well as to police staffs. The two women were identified by viewers, and the man was so shaken by his appearance on the screen that he gave himself up.

From a practical police point of view, the most useful way in which films for production in court would help at the moment is in relation to interviews in serious cases, especially in disproving the familiar allegations of policemen brow-beating or deceiving suspects into admissions, juggling papers for signature, etc. " Driving under the influence " charges would surely be much more straightforward if the court could be presented with a film showing the actual tests and demeanour of the accused ; especially as these offences appear to be increasing in difficulty as well as in prevalence, owing to conflicting medical testimony.

Several American forces are making regular films of the examination and charging of drunken drivers, and, although it is not yet usual to display such films in court, it is claimed that showing them to the accused and his lawyer before the court hearing has produced a very noticeable increase in pleas of guilty with much saving of court time.

In dangerous or careless driving charges it would be beneficial to show the associated circumstances such as the volume of traffic, weather conditions, positions of vehicles, pedestrians, traffic signals, refuges, crossings, and road surfaces.

It is unlikely that films of the actual offence could be obtained, but it would surely simplify matters if the magistrates could be shown the conditions, say at the same time on another day, to enable them to decide on such points as the traffic which might normally be expected, lay-out of road junctions, prominence or otherwise of signals, visibility from a particular point, street lighting, white lines, contours, damage to vehicles or buildings, and so on.

The worth of such evidence has been proved repeatedly in civil actions and in such matters as assisting highways engineers, police, road safety and town planning authorities to assess conditions and driver behaviour at accident " black spots " and other places where prolonged and accurate observation is desirable.

Film evidence would also be of special value in crimes such as blackmail and receiving, where it is common for the offender to be more wary than usual in hiding his identity or presence at a particular place and time, and when it is most desirable to produce evidence regarding the scene and the general background of an offence.

There are other aspects of the matter which cannot be discussed in a single article but it is suggested that the use of films on a much greater scale could save much time and discussion and, more important, assist the courts in arriving at the truth of matters in dispute.

Some years ago Singleton, L.J., commented in the Court

of Appeal that in industrial accident claims, models would simplify matters "both for litigants *in explaining their cases* and for Judges in understanding them."

In view of the efficiency and speed with which photographic evidence can now be produced and projected, films might be even more useful in all courts because they could be made clearly understandable by slow motion, close-ups, and repeated performances, when necessary.

A word in the ear is traditionally better than a shouted speech, but a picture, especially one that moves and can be enlarged to gigantic proportions, or stopped and reversed at will, is surely better than either ?

COMPENSATION CONJECTURED

We spoke at p. 445 last year, about fair market value in the context of the Compensation and Planning (Acquisition) Bill, a private member's Bill which the Government resisted. Their own effort in the same direction is part I of the Town and Country Planning Bill, presented to the House of Commons on October 29 (which has been the subject of an article at p. 818 of last year's volume). An occasional contributor to whom we are indebted for a suggestive article at 121 J.P.N. 627, entitled "The Descent of Planning," had a vigorous letter printed in *The Times* of November 8, 1958, on the subject of the Town and Country Planning Bill. The primary purpose of that Bill, as of the unsuccessful private member's Bill, is to give property owners a right to the market value of land purchased from them by the public authorities.

The title of the Bill is misleading inasmuch as parts II and III propose to amend the law upon several subjects not connected with town and country planning. Even so far as the primary purpose of the Bill is concerned the title may at first sight be thought unhappy, because the purchases to which it extends are not necessarily concerned with town and country planning—the title of the private member's Bill was better. The reason for calling the Government's Bill a Town and Country Planning Bill is that the main departure from the principle of market value occurs in the Town and Country Planning Act, 1947. The main but not only departure—for the Acquisition of Land (Assessment of Compensation) Act, 1919, which the present Bill proposes to re-establish with modifications appearing in cl. 7, as the chief governing enactment in this field, itself contains restrictions which may bring the price of land below what the vendor would expect upon voluntary sale. While the object of the Bill is to get rid of certain artificial restrictions upon market value, allowing the owner to receive a fair price, this price must be ascertained by looking, amongst other things, at the use which could be made of the land by him or by a purchaser from him in the ordinary course of dealing with land. This would be well enough if the estimated value depended upon the character of the land and the demand in the neighbourhood for land of that character. It would indeed have been more easily workable if the original idea of town and country planning had continued; if (that is to say) the vendor and purchaser had been able to look at a planning scheme which had the force of law. Both would then have known that in addition to the character of land and the demand for it there were fetters under planning law which could be ascertained, and in so far as the scheme was definite the position under planning law would not have differed in principle from the position under the Public Health Acts and similar legislation.

There have, it is true, been restrictions on the use of land for many generations; everywhere since the Public Health Act, 1848, and in many towns much longer. In the 19th century these restrictions multiplied, but on the whole they were set out in statutes or byelaws, documents in which the nature of the restriction could be plainly seen. This is not the case today. The Government's Explanatory Memorandum, Cmnd. 562, states that the development plan will show what the vendor could have done with the land if he had been allowed to keep it, but concedes at the outset that this is only true within broad limits. "It would not," says the memorandum, "be fair to assume always the most valuable or least value [of uses between those limits], but rather the kind which would be reasonable." And the memorandum goes on to admit that in some places there is no development plan, that some land is not allocated for any development at all in the development plan, and that development plans may change. Moreover, the development plan very seldom indicates what sort of detailed development can be carried out, within the class which is to dominate an area. Accordingly it is broadly true to say of the law as now existing that no landowner now knows what he will be able lawfully to do with his land, if he wants to change its present use a few years hence. He must not only look at any existing positive enactments, but must do his best to find out what the planning authority will think he ought to do when the time comes. He can only do this by applying for development permission, and for this must commit himself to some specified use. If the planning authority will not allow that use, he has a right of appeal to the Minister of Housing and Local Government. If he succeeds, the specified use is fastened on the land, and, if an opportunity occurs for developing it in a manner he had not foreseen, and he wishes to seize that opportunity, he must begin again and apply for fresh permission—even though both the uses he has had in mind are lawful, so far as positive law extends.

This was the result of the Town and Country Planning Act, 1943, and is still the law; it was a result directly relevant to the current Bill.

Now comes the task of assessing market value. Since the planning authority, supported on appeal by the Minister, may prevent the owner from making the most profitable use of the land, it follows that the selling value must take account of planning restrictions which are already known, and must also be fixed with some regard for those as yet unknown. If the Bill stopped there, the Lands Tribunal, in case of a dispute about the fair market value to be paid on compulsory acquisition, would be faced with the task of deciding what are the uses for which planning permission could have been reasonably expected if the land had remained in the owner's hands. The tribunal might think that it would have been reasonable to give planning permission for a certain use, and that the price payable to the vendor ought to be increased accordingly. On the other hand, it might think that planning permission could reasonably have been refused or hedged about with restrictions, thus lowering the utility of the land to its present owner and to a hypothetical private purchaser, and so reducing the price to be expected on a sale in the open market. In either case the tribunal

would have been obliged to make a guess at what would be said by another authority, in circumstances which had not yet arisen. The Government rightly consider that the Lands Tribunal is not constituted for this task; if the task had been left with the tribunal, inequality would have come about between the owner whose land was taken and the owner whose land was left to be developed by him, with consequent complaints by owners and administrative difficulty for planning authorities in deciding the use to be allowed for land afterwards developed privately.

The Bill therefore starts by tying the awards of the Lands Tribunal to definite planning permissions where these have been obtained already, either by the vendor or by the purchasing authority, and the Explanatory Memorandum makes the most of this. But where the planning future of a piece of land is still uncertain some means has to be devised for determining how its present market value is affected by the uncertainty. The Bill sets about this task by enabling either vendor or purchaser to apply to the planning authority (not for a permission which is no longer wanted) but for a certificate saying what development, if any, might reasonably have been expected to be permitted if permission were still wanted. It is this feature which most disturbs the correspondent we have mentioned. The early part of the Bill is studded with phrases like "would be appropriate" or "might reasonably be expected," and in the last resort the questions implicit in these phrases can only be answered by the Minister of Town and Country Planning, on an appeal under cl. 5. The appellant may be the landowner whose land is being taken, or the acquiring authority. Generally it will be the owner —if only because the acquiring authority will often be the council of a county or a county borough, so that the acquiring authority in its capacity of planning authority is subject to a strong temptation to underestimate the "reasonableness" of the development for which, in a hypothetical future, the owner might have sought planning permission. The public can hardly feel confident that the local authority's planning left hand has remained in ignorance of the fact that its right hand is being inserted into the owner's pocket. Nor is this all. The Minister of Housing and Local Government, who has to decide appeals about certificates, granted or upheld, is not ordinarily an acquiring authority himself, but he is responsible for general oversight of many of the activities of the most numerous acquiring authorities, and is open to attack in Parliament if he is suspected of being lukewarm or obstructive towards those activities. He confirms the acquiring authority's compulsory purchase order and sanctions the loans for payment of the purchase money. Moreover, the purpose for which the land is being bought is often a purpose which he is under an obligation to encourage. Hitherto he has been on strong ground, in that when a compulsory purchase order was before him he could say with truth that the landowner would get whatever price was found by an impartial tribunal to be fair, within the limits to be laid down by statute. So again, when sanctioning the loan for an undertaking, he could say that the price of land included in the amount of the sanction had been impartially decided. Now he will for practical purposes supersede the impartial tribunal assessing compensation, not merely upon a local authority's acquisition but upon acquisition by his colleagues in the Government, notably the Minister of Transport and Civil Aviation. A decision by the Minister of Housing and Local Government, upon appeal, that the planning permission reasonably to be expected for a certain piece of land would have been for low grade unremunerative use, may well be suspect when the effect will be to reduce the charge upon another department of government, not less than when the charge falls upon the ratepayer and the purchase is for a purpose in which the deciding Minister is interested. Nor will the Minister of Transport and Civil Aviation be exempt from suspicion. Hitherto when he has confirmed a compulsory purchase order which he has himself proposed (in itself an odd enough function) he has been safeguarded against some unkindly comments by the fact that when compensation came to be assessed this would not be done by him, or by any other Minister, but by the Lands Tribunal. In future, the Lands Tribunal will by virtue of cl. 2 (5) of the present Bill be bound by the certificate of the Minister of Housing and Local Government, in all cases where the position as regards planning permission has not been determined otherwise.

We do not ourselves suppose that a desire to reduce the compensation burden upon public funds unfairly will sway the minds of those who advise the Minister on planning appeals, or under the new Bill when a certificate is applied for. All experience suggests they will do their best to decide upon its own merits the question posed: "What could reasonably have been expected in circumstances which now will never arise?" But we are not sure whether the public, lacking our experience of ministerial decisions, will be as ready to believe in their integrity.

The letter in *The Times* which was mentioned at the beginning of this article would have got rid of this opening for public mistrust, by getting rid of the certificates stating the "reasonable expectation," and substituting a test applied in s. 85 of the Town and Country Planning Act, 1947, for the purpose of deciding whether payments under part VI of that Act are to be made to certain landowners. At first sight it seems attractive, to adopt a test which has been working for 12 years; its purpose, though not the same, could be regarded as analogous, in that it was concerned with payments from public funds to landowners. It does not, however, seem to us that the suggestion is a good one. In the first place, s. 85 is concerned with a narrow class of landowners, and with land tied to special purposes, whereas the current Bill is concerned with land which may, in theory, be put upon the market for a purchaser to use in any lawful manner. Secondly, the use of the land at the time of notice to treat must be such that there is no general demand or market for land for the purpose of that use. Thirdly, the test applied in these circumstances is to be (that planning permission would be granted for any development . . . which . . . would correspond with) the use which prevails generally in the case of contiguous or adjacent land, and that no development charge would be payable in respect of any such development.

This seems to us to be at once too narrow a conception of the possible utility to the vendor and to a private purchaser, of land which is being compulsorily acquired, and also to be too imprecise, as applied to land which belongs to an owner who is able and willing to dispose of it, without being affected by the restrictions (not under planning powers) which attach to an owner who falls within s. 85 of the Act of 1947. Indeed, to speak of "the use which prevails generally in the case of contiguous or adjacent land" seems not much better, as a test for the value of a particular plot, than to speak of the development plan. Lastly, even s. 85 has had to fall back in subs. (5) upon the Minister's idea of what is reasonable, where a question is raised about future use of land not in actual use for the primary purposes of the section, so that one would not, by adopting

s. 85 as a precedent for the current Bill, necessarily escape from ministerial discretion.

As things are, we find ourselves reluctantly driven to the conclusion that the system proposed by cls. 4 and 5 of the Bill is inescapable—our fear is about its giving satisfaction to a public conditioned by years of agitation about so-called "land-grabbing."

There is another aspect of these clauses of the Bill which gives cause for grave anxiety: we mean the overloading of the Minister's staff with more appeals. At 121 J.P.N. 241, we quoted with approval the idea thrown out by the Secretary of the Ministry when speaking at an architectural dinner: that a number of restrictions under the Act of 1947, which now produce appeals involving frustration and delay, should be removed: *cp.* 122 J.P.N. 381. No steps in this direction have been taken: for planners up and down the country, as for Kingsley's lobster, it is evidently "a point of honour never to let go." Their tenacity has apparently defeated Dame Evelyn Sharp's desire to set her staff free from time-consuming preoccupation with appeals on trivialities, where the private person could well be let alone. If the need for planning permission were to be confined to major matters, the main purpose of the Bill would be helped in another way, because the factors to be taken into account by a potential purchaser would be fewer.

An example mentioned in Dame Evelyn Sharp's speech was height of buildings—she was a little hesitant about it, and many people (including some of those who still believe that even in 20th century England there is room for liberty) may shudder at the notion of letting a man build higher than some local authority thinks proper. Let us, therefore, leave this example on one side. There are other examples of control which depress the value of land, and some, chiefly of aesthetic detail, which probably do not. Even if the more important fetters which do demonstrably affect the selling value of a piece of land had to be retained, there would still be room for relaxing the grip of planning authorities in minor matters.

We saw last year a case in which refusal by a county council to let a householder change a bay window to a flat window had wrecked the hope of agreement for widening a trunk road. There was the fantastic interference by a planning authority with a garden statue at 122 J.P.N. 84, and there is the recurrent nonsense of meddling by county councils with the desire of other local authorities to make the Litter Act, 1958, effective. In this last instance the Minister has unfortunately been infected by the itch for management, incidentally supporting the writer of the letter in *The Times*, in his reference to Parkinson's Law in the world of planning.

The Bill now before Parliament could have been used to get rid of some at least of the uncertainty which now artificially reduces the value of land to developing owners, and also to sweep away several controls which may not have a serious effect on money value but are a constant source of waste of time and irritation. Had the opportunity been taken, the Minister's staff would have had a less complex mass of appeals under cl. 5, and more time for handling those which still remained, which at best must hold up the settlement of compensation claims. It is a pity that the Government have not had the courage to cut the lobster's claws.

The foundation of these delays, and the complications and mistrust which must arise from trying to marry the incompatible ideas of fair value and discretionary control, lies in the course taken by Parliament in 1943. But no political personage, and certainly no political party, dares to look at the foundation, so the country must do what it can to devise a superstructure which will bear the strains and stresses.

WHITHER O. & M.?

By RAYMOND S. B. KNOWLES, D.P.A., A.C.I.S., A.C.C.S., L.A.M.T.P.I.

In the sphere of O. & M. the outside consultant *v.* staff team argument will no doubt go on interminably, like the lawyer-clerk controversy. The powerful reasoning which supports one view rather than the other has little effect in altering firmly entrenched opinions, which the other side will regard as prejudices.

But the writer has become convinced that one all-important defect exists in O. & M., whether the service comes from the private firm of consultants or the permanent O. & M. officer. This is inability to get to grips with fundamental faults of high-level organization.

Because O. & M. is a tool of management the practitioners of O. & M. tend, not unnaturally, to regard management as sacrosanct. Many factors strengthen this tendency. In the case of the private consultant the business instinct demands that the customer must not be too severely criticized or embarrassed by recommendations too revolutionary, for fear of losing prospective future clients. In the case of the internal O. & M. team, there is the very real possibility of incurring the displeasure of those influential in matters of promotion. These difficulties are largely inescapable so long as O. & M. is practised in its present form. More serious, however, is the fact that these limitations upon the effectiveness of O. & M. are rarely appreciated: the defect is cloaked beneath a rather pernicious maxim that O. & M. recommendations unlikely to be adopted ought never to be made . . .

So far as the writer knows no private consultant has yet questioned the departmentalism which divides and disrupts the most efficient local authority organization. Certainly no internal O. & M. team has done so, at least positively and avowedly; and probably few have had the opportunity, because terms of reference generally limit activities to departmental reviews, at the most. Nor again, so far as the writer is aware, have there been any strong recommendations that the town clerk should assume general manager status and powers.

Only the Treasury's O. & M. team—securely independent, with nothing to lose themselves, yet offering so much by which local government might gain—have dared question deeply some of the traditional concepts of local authority domestic administration. The far-reaching proposals in the Coventry report are probably too well-known to need repetition, though it may be suspected that certain interests, of the Law Society and the chief officers' associations, would gladly wish them buried and forgotten.

Some time, somehow, ways and means must be devized of

establishing a kind of supra-O. & M. body to put forward realistic recommendations for the domestic reform of local government.

Clearly a Royal Commission, a departmental committee, anything of that sort, is not only too ponderous in operation but its recommendations can be frustrated far too easily and conveniently. Perhaps something akin to an arbitration tribunal might provide the answer: a body whose recommendations must be implemented by those willing to have the courage and foresight to set it up.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Lord Evershed, M.R., Lord Cohen, and Sellers, L.J.)

TOWNSENDS BUILDERS, LTD. *v.* CINEMA NEWS AND PROPERTY MANAGEMENT, LTD. (DAVID A. WILKIE AND PARTNERS, *Third Party*)

November 24, 25, 26, 27, 28, 1958

Public Health—Situation of water-closets—Breach of byelaws—Recovery of price of works.

APPEAL from Westminster county court.

Work carried out by the plaintiffs, a firm of building contractors, involved on two floors of the defendants' premises the construction of a bathroom and lavatory in separate rooms. Entry was to be had to each of these rooms from two adjoining bedrooms. Byelaws of the London county council required that a water-closet should not be "entered from any room used for human habitation . . . provided that a water-closet used exclusively with a bedroom or dressingroom may be entered directly from such room." Breach of the byelaws was punishable by fine under s. 109 of the Public Health (London) Act, 1936. The building work in question infringed the byelaws, but the plaintiffs did not know, until the work was advanced, that that would be the case. The local authority for a time did not insist on compliance with the provision of the byelaws. In an action by the builders for work done the defendants contended that the price for the work in question could not be recovered because it was illegal by reason of being in breach of the byelaws. The architect who was brought in as a third party submitted that the byelaws were invalid as being unreasonable, unjust and uncertain.

Held: (i) the byelaws were not to be treated as invalid on the ground of unreasonableness, injustice, or obscurity in their languge, and the court would be all the slower to hold byelaws invalid in proceedings to which the local authority concerned were not parties; (ii) there was no fundamental illegality pervading the whole of the contract or the work done, and, therefore, the plaintiffs were entitled to recover the costs of the work done in contravention of the byelaws.

Counsel: *King-Hamilton, Q.C.*, and *Wiggins*, for the building owners; *H. H. V. Forbes*, for the builders; *Gardam*, for the architect.

Solicitors: *Dod, Longstaffe & Fenwick; W. J. Fraser & Son; Sydney Redfern & Co.*

(Reported by F. Guttman, Esq., Barrister-at-Law.)

(Before Lord Somervell, Morris and Pearce, L.JJ.)

HENRY BOOT & SONS, LTD. *v.* LONDON COUNTY COUNCIL

November 17, 18, 1958

Building Contract—Rise and fall clause—Rates of wages—"Wages"—Weekly sums credited to each employee of contractor each week, payable as lump sum holiday money.

APPEAL.

A local authority entered into a building contract which provided that "if during the currency of this contract (*a*) the rates of wages payable for any labour employed in the execution of the works shall in conformity with agreements between associations of employers and trade unions be increased above or decreased below the corresponding rates in force at the date of the contractor's tender," the contract price should be varied accordingly. During the currency of the contract the amount set aside each week under an agreed holiday scheme by the contractor for each of his employees (which amounts could be drawn by the employee as a lump sum when he took his holiday) was increased.

Held: the sums so set aside, being weekly sums which had to be credited to the employee each week, were within the expression "rates of wages," and so the increase entitled the contractor to vary the contract price.

Counsel: *Stewart-Brown, Q.C.*, and *Gardam*, for the contractor; *M. Hoare*, for the local authority.

Solicitors: *Masons; Solicitor, London County Council.*

(Reported by Henry Summerfield, Esq., Barrister-at-Law.)

COURT OF CRIMINAL APPEAL

(Before Lord Parker, C.J., Cassels and McNair, JJ.)

R. *v.* LASHBROOKE

December 15, 1958

Criminal Law—Trial—Plea—Indictment containing three counts—Plea of guilty to two and not guilty to one—Jury present in box, but not sworn—Jury sworn after plea and trial proceeded with—No objection or request for warning by defending counsel—Validity of conviction.

APPEAL against conviction.

The appellant was indicted before the county of Chester quarter sessions on an indictment containing three counts. To the first count of shop-breaking and larceny he pleaded guilty; to the second count, which was another charge of shop-breaking and larceny, he pleaded not guilty; and to the third count of shop-breaking with intent, he pleaded guilty. At the time when he so pleaded there were 12 jurors in the jury box waiting to be sworn. When he pleaded not guilty to the second count, the jury was sworn. He was tried on that count and was convicted. No challenge to any juror was made by defending counsel nor was the chairman asked to give a specific warning to the jury, when considering count two, to disregard the appellant's pleas on counts one and three. The Court was asked to quash the conviction on the second count on the ground that the jury must have known the appellant's antecedents through his plea of guilty to the first and third counts and on the ground that the jury was not warned that any knowledge derived from those pleas ought to be disregarded.

Held: that, if what happened was to be regarded as an irregularity, it was the duty of counsel to direct the attention of the court of trial to it timeously, and, as that had not been done, the conviction would not be interfered with on appeal.

Counsel: *Butler*, for the appellant; *D. Morgan Hughes*, for the Crown.

Solicitors: *Field, Roscoe & Co.*, for *Keith Moore*, Chester; *Kinch & Richardson*, for *Percy Hughes & Roberts*, Birkenhead.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

R. *v.* COX

December 15, 1958

Criminal Law—Sentence—Corrective training—Two previous convictions—Prisoner placed on probation by quarter sessions—Two subsequent convictions at different courts—Prisoner brought back to quarter sessions for sentence—Sentence of corrective training imposed—Criminal Justice Act, 1948 (11 *and* 12 *Geo.* 6, *c.* 58), *s.* 8 (5).

APPEAL against sentence.

On June 23, 1958, the appellant pleaded guilty at Bedfordshire quarter sessions to a charge of house-breaking and a probation order was made for three years. Subsequently he stole 9*s.* from a meter, for which he was sentenced to three months' imprisonment, and tins of fruit from a lorry, for which he was sentenced to six months' imprisonment. The convictions took place on different occasions and at different courts. As a result of those convictions he was brought back to quarter sessions for breach of probation, where he was sentenced to three years' corrective training for the original offence. When the original offence was committed the appellant was not eligible for corrective training. He became eligible only if one took into account the two offences committed after he was put on probation.

By s. 8 (5) of the Criminal Justice Act, 1948: "Where it is proved to the satisfaction of the court by which a probation order . . . was made . . . that the person in whose case that order was made has been convicted and dealt with in respect of an offence committed during the probation period . . . the court may deal with him for the offence for which the order was made, in any manner in which the court could deal with him if he had just been convicted by or before that court with that offence."

Held: that, in view of the language of the section, quarter sessions was entitled to take into account the two convictions

after the appellant had been placed on probation and to pass a sentence of corrective training accordingly. The appeal must, therefore, be dismissed.

No counsel appeared.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

R. *v.* CUNNINGHAM

December 8, 1958

Criminal Law—Provocation—Defence applicable only to murder. Criminal Law—Evidence—Character of prisoner—Imputation on character of Crown witness—Suggestion that witness invited prisoner to homosexual practices—Liability of prisoner to cross-examination on previous convictions—Criminal Evidence Act, 1898 (61 *and* 62 *Vict. c.* 36), *s.* 1, *proviso* (*f*) (*ii*).

APPEAL against conviction and sentence.

The appellant was convicted at Worcestershire quarter sessions of unlawful wounding and was sentenced to five years' imprisonment. The appellant was about to dismount from an omnibus on which he had been travelling, when one T, a passenger, whom he knew, said to him: "Oh, you are getting off here, Jack; I thought you were coming to Droitwich with me." The appellant then made a violent attack on T. At the trial it was suggested to T in cross-examination by defending counsel that T meant, and the appellant understood him to mean, that they were to go off together and indulge in homosexual practices. T vehemently denied this. When the appellant gave evidence, the deputy-chairman permitted prosecuting counsel to cross-examine him on his previous convictions. It was contended on his behalf, that, assuming that provocation could be a defence to the charge, the question put to T in cross-examination was not an imputation on his character within s. 1, proviso (*f*) (ii) of the Criminal Evidence Act, 1898, which would render the appellant liable to be cross-examined on his previous convictions.

Held: (i) that provocation was a defence only on a charge of murder, and not on a charge of wounding or any other charge; and (ii) that as no defence of provocation arose in the present case, the question put to T was an imputation on his character which rendered the appellant liable to cross-examination on his previous convictions. The appeal must, therefore, be dismissed.

Semble, even on a charge of murder where the defence of provocation does arise, a question of the nature put to the witness in the present case would render the prisoner liable to be cross-examined on his previous convictions.

Counsel: *R. H. Tucker*, for the appellant; *Malcolm Ward*, for the Crown.

Solicitors: *Registrar, Court of Criminal Appeal; T. Horton & Sons.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

POLLUTION OF RIVERS

The Rivers (Prevention of Pollution) Act, 1951, gave wide powers to river boards to deal with river pollution. The formation of these boards under the River Boards Act, 1948, with jurisdiction over complete river systems or groups of river systems and the powers given by the Act of 1951, were a big step forward in a long campaign for the purification of the rivers. It was realized, however, that improvements would be a gradual and perhaps even a slow process since regard would need to be had to the reasonable requirements of industry. It appears from a debate in the House of Lords just before the recess that much remains to be done in this connexion. Lord Fraser of Lonsdale asked whether the Government was aware that many rivers are polluted by untreated or inadequately treated sewage and by industrial effluents so that beaches are spoiled, fish are killed and beautiful places are often unpleasant and sometimes disgusting. He asked if the Government would encourage and help local authorities to take action to remedy this situation. Earl Bathurst agreed that the adequate treatment of domestic sewage and industrial waste was a very grave problem. In the past years it has not been possible to authorize unlimited capital expenditure on sewage disposal schemes to keep up with housing and industrial development. Nevertheless he thought the position was improving. By the Act of 1951 the consent of river boards is required for all new or altered discharges into rivers under the administration of the Board.

Since 1945 some £237 million has been spent by local authorities in the United Kingdom as a whole upon new sewage works. In addition, industry has spent large amounts of money on the pre-treatment of its own waste. In 1957, in England and Wales, £24·9 million was authorized for sewage disposal schemes and from January to October of 1958 £27 million has been authorized which is a greater sum than ever before.

PROVISION FOR OLD AGE

Lord Pethick-Lawrence initiated a debate in the House of Lords just before the recess on the White Paper "Provision for Old Age," which brought an interesting speech from Lord Beveridge. Lord Pethick-Lawrence criticized the Government plan because the provision for higher pensions did not go high enough and also because the self-employed were omitted.

Lord Beveridge commenced his speech by pointing out that when national insurance began in 1911 roughly one in 15 or two to three million of all the people in this country were of the present pensionable age—65 for men and 60 for women. Now there are five million representing one in seven of the whole population. It is estimated that in 1980 there will be 9½ million, or one in five of the population. This shows the problem of making provision for people in their old age. Lord Beveridge urged the Government to recognize as the first priority that pensions should be enough to live on and not subject to a means test. That was his first criticism of the Government scheme. But he criticized the Labour Party scheme because it was an incitement to inflation. He thought the problem of old age was so important that it ought to be taken out of politics. He believed that an all-party round table conference might find a way to guarantee the welfare of old people without crushing all those of working and taxable age and without ruining the country by inflation. But he said no party could agree to that if it was looking over its shoulder to ask what the voters might think.

Lord Jessel agreed that the aged must be looked after but he did not want to pile up unnecessary contributions from those who are working. He thought it would be better to increase the rates of national assistance if they were insufficient. Lord Sinclair of Cleeve, speaking from his special experience of occupational pension schemes, said the provisions for contracting out suggested in the Government scheme were most complicated and difficult to appreciate. He thought the scheme really discouraged such schemes. Lord Latham considered the Government scheme was unsatisfactory because it excluded nearly eight million persons from superannuation; it limited the scheme to 54 *per cent.* of insured persons; it transferred the liability for the deficit on the flat-rate pensions scheme from the Exchequer to contributors; no provision was made for the self-employed; the arrangements for contracting-out were unsatisfactory; the pensions were too low for the contributions to be paid and there was no provision for increasing the present pension rates.

The Earl of Dundee, speaking for the Government, said that during the war all political parties agreed on the Beveridge report. Although since that time the economic position of the majority of wage-earners has changed considerably he thought there was still a great deal of common ground between the parties about providing for old age. There was, however, a great many differences between the two schemes and he did not think it was likely that these differences would diminish while the possibility of an election drew nearer. He agreed that the suggestion for an all-party conference was excellent, but he evidently did not feel that, in present circumstances, this was likely.

MARRIAGE AND DIVORCE STATISTICS

A report issued recently by the Registrar-General contains the official commentary on the civil and medical statistics for 1956. There were 5,000 fewer marriages than in 1955. The rate of 15·7 persons married per thousand total population was slightly smaller than that for the previous year but the decline was due to the smaller number of unmarried persons of marriageable age in the population. At the most usual ages of marriage the number of unmarried women no longer exceeds that of men and an approximate balance has been reached. There has been a continued rise in marriage rates at young ages.

The number of divorce decrees granted continued to decline, from 26,816 in 1955 to 26,265 in 1956. When allowance is made for various factors it seems likely that the general level of divorce has doubled as a consequence of World War II. The proportion of divorced persons who remarry continued in the region of three-quarters, being a little higher for men than for women.

ANNUAL REPORTS, ETC.

ANNUAL REPORT OF THE CHIEF MEDICAL OFFICER OF THE MINISTRY OF HEALTH

The staff of the General Register Office make their usual contribution to the annual report of the chief medical officer of the Ministry of Health by providing a resumé of the important vital statistics for 1957. At the middle of the year the estimated home population of England and Wales was 44,907,000. This was 240,000 more than in 1956 and 46,000 more than in 1955. There were 714,870 deaths during the year, which represents a crude rate of 11·5 per 1,000 population as compared with 11·7 in 1956. The infant mortality rate fell again and was 23·1 per 1,000 live births. New Zealand, the Netherlands and Sweden, however, continue to show that even better results can be obtained. Diphtheria has ceased to be a source of anxiety in so far as the public health is concerned. While tuberculosis continues to lose its importance as a cause of mortality, the cancers and the diseases of the circulation steadily maintain the lead they have established over the past two decades. Between them they now account for nearly 70 *per cent.* of deaths from all causes. The Ministry has no reason to suggest that the peak of this trend has yet been reached. Male deaths ascribed to cancer of the lung and bronchitis totalled 16,430—5·2 *per cent.* more than in 1956. Female deaths numbered 2,689, an increase of 4·6 *per cent.* The death rate for tuberculosis as a whole was 11 *per cent.* less than 1956, and was higher among elderly men than among other males or elderly women. The number of cases of tuberculosis on the chest clinic registers at the end of the year showed an increase of 556 on the previous year. This seems to be paradoxical but the Ministry suggests that it may be due to a growing tendency for chest physicians to treat their patients at home. The valuable effect of the mass radiography service, started in 1943, is shown by the fact that it undertook nearly 24 million examinations in 1956 as compared with only half a million in 1946.

In the chapter on the rheumatic diseases it is pointed out that rheumatoid arthritis and osteo arthritis form the hard core of the problem.

Mental Health

At the end of the year there were 144,510 mental patients in Ministry of Health hospitals. Overcrowding still remained a problem and amounted to 11·9 *per cent.* (male nine *per cent.*, female 14·1 *per cent.*) more than the authorized accommodation. The nursing position is improving, and there was a 30 *per cent* increase of woman student nurses and a 40 *per cent* increase of men. The chief medical officer points out in his introduction to the report that the movement to allow greater liberty to patients who are mentally ill is gaining momentum. Freedom from restraint is now being regarded as an important therapeutic measure. He suggests, however, that there is a danger that the pendulum may swing too far and that insufficient control over patients may lead or appear to lead to incidents that might well alienate a public opinion which is only slowly being brought to regard mental illness with the same tolerance as physical illness and result in a demand for a reversion to conditions from which the system has only recently been liberated. As he says, whatever their disadvantages in the past, the mental hospitals did provide refuge for the mentally ill where they were spared exploitation by the unscrupulous. In this sheltered environment, many of them found little difficulty in leading quiet and harmless lives, undisturbed by the stresses of the outside world. It is suggested that perhaps too little credit tends now to be given to this aspect of asylum life, although there is no doubt that it was an important factor in the well-being of many of the patients. It is thought that too sudden a transition from such a life to the stimulating hurly-burly of normal existence may well provoke a recurrence of abnormal behaviour.

The number of patients under care in institutions under the Mental Deficiency Acts was 59,767 including those on licence. There was 9·7 *per cent.* overcrowding.

A separate chapter deals with the care of the aged with mental illnesses. About 20 *per cent.* of admissions to mental hospitals are patients over 65. About 32 *per cent.* of the patients in these hospitals are in that age group, two-thirds being women; another 17 *per cent.* of the admissions and 22 *per cent.* of the resident patients are in the age group 55–64 years. It is accepted in the report that some of the patients admitted and some of the resident patients could equally well be cared for elsewhere. It is suggested, however, that this is a period of transition and it is noteworthy that there is a progressive change in policy moving away from the use of mental hospitals for "asylum" purposes and using them instead for active treatment and rehabilitation. Special attention is drawn in the report to the need for the establishment of more short-stay psychiatric units. Experience in the Oxford region is quoted as an example of how out-patient services, day hospitals and domiciliary visits can reduce admissions. There, the admission of people over 65 years of age was reduced from 25 *per cent.* of admissions to 10 *per cent.*

General Public Health

In the chapter on General Public Health there is emphasis on the essential place which research should occupy in a local public health department. It is suggested that perhaps in its modern connotation research is too grand a word to employ with regard to the type of inquiry a public health department can make into aspects of the great modifications in the social environment which are taking place. Nevertheless, though such inquiries may require less technical knowledge than the type of work now dignified by the term research, it is suggested that their value to the department and its staff is quite as high as that achieved by the more ambitious projects.

On environmental hygiene it is urged that the possible delegation of some of the personal health services by local health authorities to the larger units should not be allowed to obscure the fact that these services will continue to form a major function of all county districts. It is suggested that while the county, the county borough and the metropolitan borough health departments may loom large in the public health structure, any tendency to regard as of less consequence those of the smaller, but even more numerous, local authorities should be resisted, for upon them rests a heavy obligation in the maintenance of sound and effective standards of public hygiene. Despite outstanding developments in the provision of piped water-supplies, sewerage and sewerage disposal systems, housing schemes and refuse collection and disposal, much yet remains to be done, particularly, it is suggested in rural districts. It is urged that the county medical officer must continue to exercise constant effort and vigilance in the effort to improve and to extend these services.

The chapter on Food and Nutrition contains a record of the action taken in certain directions involving food hygiene. The average annual incidence of food poisoning was found to be higher than represented by the figures of notification. It is thought, therefore, that much food poisoning escapes notification to medical officers of health even up to half of the total known number of cases. On milk it is noted than 93 *per cent.* of the population now consumes milk which is free from tuberculosis.

The report on the Dental Health Services shows there are still not nearly enough dentists in the country and that the local authority services suffer from inadequate recruitment.

Turning to an entirely different matter it is noted in the report that the National Blood Transfusion Service made steady progress during the year, and met all demands upon it.

Miscellaneous

One of the medical officers of the Ministry has been making an inquiry of the arrangements made for the care and treatment of young handicapped children. She has discovered the need for close medical supervision of such children and medical counselling of their parents. It is suggested that this can best be obtained by having the team of workers concerning themselves with such cases led by a paediatrician or medical officer with special knowledge and experience. Another point which is stressed is the recognition that to keep a handicapped child at home is infinitely preferable to sending him to an institution, provided that his home conditions are tolerable, and his family are properly instructed in his care and discipline.

Finally the chapter on the blind and partially sighted contains an interesting analysis of the certificates given for such persons. Though at 11,288 new registrations of the blind the figures showed a decline of 774 over 1956 the total number on the blind register was 746 higher than that year due to an increase of those over 70 years of age. Despite the fact that certificates deal with blindness as defined by law, only some 14 *per cent.* of the total number of those registered were either totally blind, *i.e.*, having no perception of light (3·3 *per cent.*) or had perception of light only (10·9 *per cent.*). All the others had some degree of vision though not of good enough quality to enable them to pursue an occupation in which sight was essential.

COUNTY BOROUGH OF SOUTHAMPTON: CHIEF CONSTABLE'S REPORT FOR 1957

Twenty vacancies (19 men, one woman) left this force, on December 31, 1957, with an actual strength of 374 and an establishment of 394. The intake during the year was 31, the losses numbered 32. The four-legged members of the force, the police dogs, " continue to give excellent service and are used extensively in attending at scenes of crime."

This force has a river patrol to add variety to its duties and the launch was on patrol for 321 of the 365 days during 1957, with 2,600 engine hours running. Their duties included helping to pull off a small tanker which had run aground and rescuing various participants in local regattas who found themselves, involuntarily, in the water.

There were fewer juvenile offenders proceeded against in 1957 (205) than in 1956 (227). The 1955 figure was also 205. Sixty-two of them were dealt with for breaking offences. It is noted in the report that 44 juveniles were ordered, during 1957, to attend at the local attendance centre. This made a total, since the centre opened in 1953, of 192. Of this total 38 are known to have re-appeared before the court for further offences. One was sent to borstal, 17 to approved schools, six had another attendance centre order made, nine were placed on probation, four conditionally discharged and one fined.

BEDFORDSHIRE WEIGHTS AND MEASURES REPORT

The report of Mr. E. K. Udy, chief inspector of weights and measures to the Bedfordshire county council, shows a generally satisfactory position throughout the county. In only a few instances was it found necessary to institute legal proceedings during the year. Complaints of short weight or measure were very few.

The number of inspections still fall short of statutory requirements because of shortage of staff and ever-increasing duties. Industrial development continues in the southern part of the county. In some cases over a week can be spent on a single inspection, such as visits to factory premises where a large number of complicated weighing machines are found. The time spent on testing individual appliances can vary considerably when one considers they can range from a measure in a small off-licence shop, to electrically operated automatic packet or sack fillers at a factory.

The sale of coal of a grade lower than that charged was the subject of some complaints but, so far, as weight was concerned, no deficiencies were found. The question of grading and complaints about it has been before the County Councils' Association, who have made representations to the Ministry of Fuel and Power on the subject.

In the matter of petrol it still appears that the customer at the filling station generally receives rather more than he pays for. Mr. Udy comments that " the error allowances which were laid down in 1929 when fuel was much cheaper, now appear to be far too generous and need reviewing . . . a legal error which permits the giving of the equivalent of ¼*d.* per gallon to each purchaser is far from being an economic business proposition."

The inspectors keep a watch on advertisements in local newspapers to ensure that transactions, often not carried out from normal trading premises, are being conducted without prejudice to regular traders.

NORFOLK COUNTY FINANCES, 1957–58

This is the last set of accounts to be presented by Mr. T. Clay, Norfolk county treasurer, who retired on August 31, last.

His summary gives in clear and concise booklet form all the information about the finances of the county which most people will require.

Expenditure totalled close on £9¼ million, equal to £24 11*s.* per head of population, 23 *per cent.* of this total being met from rates. Most services required more money in 1957–58 than in the previous year although percentage increases varied considerably: thus 22 *per cent.* more was spent on trunk roads but less than three *per cent.* additional on county roads.

The county council is contributing a good deal of money to help the district councils with the expense of sewerage and water schemes: revenue expenditure under this head totalled £135,000 and contributions charged to capital account totalled £144,000 in addition.

Loan debt at the year end amounted to £7¼ million, of which £4,600,000 had been raised externally (£3,200,000 from the Public Works Loan Board) and the balance from the superannuation fund and other internal sources.

The accounts are preceded by Mr. Clay's excellent introduction commenting on the main points of financial importance arising during the year.

REVIEWS

Cases on Criminal Law. By J. W. Cecil Turner, M.C., M.A., LL.B., Barrister-at-Law, and A. L. L. Armitage, M.A., LL.B., Barrister-at-Law. Second Edition. London: Cambridge University Press. Price 60s. net.

Kenny's Outlines of Criminal Law, first published in 1902, now edited and practically re-written by Professor Turner, has been a standard text book for students and has been of value also to many practitioners and officials concerned with the administration of the criminal law. Professor Kenny compiled a case book as a companion to his *Outlines,* and the first edition of *Cases on Criminal Law* by the present authors, published in 1953, was based on that case book.

The present edition brings the law up to date, including for example a number of cases involving the provisions of the Homicide Act, 1957. It is, like the original case book, intended to be used by students as a companion to the current edition of the *Outlines,* and numbers at the head of each case correspond to those of the paragraphs in the *Outlines* which contain reference to the principles which the case illustrates.

The work is divided into three parts and a supplement. The first deals with general considerations such as *mens rea,* vicarious responsibility, mistake, insanity, intoxication, compulsion, attempts and accessories. The second part treats of particular crimes including offences against the person, against property and against the state. The third part is concerned with evidence, presumptions and methods of proof. The supplement contains 41 new cases reported at length, with brief references to others.

Although this is a student's book, it is one to be recommended to those who are no longer students and who have occasion to consult reports of the leading cases, but may not have always accessible the various series of reports. Here are to be found brief statements of principles and references to decided cases, old and new, with full judgments set out in the most important cases. We have found it a valuable work of reference.

The Constable's Pocket Guide to Powers of Arrest and Charges. By Fred Calvert, M.B.E., Divisional Superintendent, King's Lynn Division, Norfolk Constabulary. London: Butterworth & Co., 88 Kingsway, W.C.2. Price 7s. 6d., postage 6d. extra.

This is the second edition of a remarkable little book. Into just over 70 pages of about postcard size the author has managed to set out a wealth of information that a constable may need, and may, moreover, need when he has no time to consult either his superior officers or any textbooks, and little time in which to make up his mind upon such a vital matter as whether he has or has not the power to arrest without warrant. Offences are arranged in alphabetical order, with bold headings, and under each there is a statement of the law as to arrest, followed by a form of charge and a brief but valuable comment. For instance, when dealing with arrest for false pretences, Mr. Calvert refers to the doubt about arrest, by day, without warrant for an attempt, and adds that there have been, none the less, many instances of such arrests without adverse consequences. This puts the constable on guard against exceeding his powers. There is a full index, so that quick reference is further facilitated. Altogether this is an excellent piece of work.

The Rent Act, 1957. Supplement. By S. W. Magnus. London: Butterworth & Co. (Publishers) Ltd. Price 6s. 6d. net.

Magnus on the Rent Act, 1957, has already proved itself a useful commentary. The present supplement brings the Landlord and Tenant (Temporary Provisions) Act, 1958, into focus with the principal Act. Although, as the learned editor points out in his preface, the Act of 1958 is temporary, its provisions have had a continuing effect on property owners and given to many tenants the hope of a more or less indefinite security of tenure. Time and politics will show how far these hopes are fulfilled. Meantime the present supplement records the decisions on the Act of 1957, which had been reached up to the long vacation, and the Rent Restrictions (Amendment) Rules, 1958, while the learned editor has noted other points, which have arisen but await decision on some other parts of the Act of 1957. The Act of 1958 is itself a short one, and the commentary upon it runs only to 28 pages. These are, however, important to the practising lawyer, and nobody who has to advise upon the present situation can afford to be without a commentary of this kind.

NEW YEAR HONOURS

PRIME MINISTER'S LIST
KNIGHTS BACHELOR

Hayward, Alderman Isaac James, leader of the London county council.

Holland, Edward Milner, Q.C., chairman, Bar Council. Attorney-General, Duchy of Lancaster.

CIVIL DIVISION

C.B.

Dobson, D. W., deputy clerk of the Crown in Chancery, Lord Chancellor's office.

Part, A. A., Under-Secretary, Ministry of Education.

Sanders, C. W., Under-Secretary, Board of Trade.

ORDER OF ST. MICHAEL AND ST. GEORGE

G.C.M.G.

Lee, Sir Frank Godbould, Permanent Secretary, Board of Trade.

ORDER OF THE BRITISH EMPIRE
CIVIL DIVISION

D.B.E.

Buckley, The Hon. Ruth Burton, alderman, East Sussex county council. For public services in East Sussex.

K.B.E.

Simpson, Joseph, Commissioner of Police of the Metropolis.

C.B.E.

Allison, Alderman C. W., chairman, Tees Valley and Cleveland Water Board.

Arney, F. D., general manager, Port of Bristol Authority.

Culley, A. R., principal medical officer, Welsh Board of Health.

Ellicott, L. P., deputy chief technical planner, Ministry of Housing and Local Government.

Finlay, J., chairman, Northern Ireland Fire Authority.

Frost, N., chief constable, Bristol city police.

Glaister, Alderman T., Bolton county borough council.

Gurney, Alderman N. W., chairman, Buckinghamshire county council.

Henshaw, J. E., lately divisional inspector of mines and quarries, West Midlands and South division, Ministry of Power.

Heycock, Alderman L., chairman, Glamorgan education committee.

Kelly, G. C., senior administrative medical officer, South West Regional Hospital Board.

Lawrence, V., clerk, Monmouthshire county council.

Longland, A. C., Q.C., senior referee under Family Allowances and Contributory Pensions Acts.

Lupton, H. V. E. H., assistant secretary, Board of Trade.

Marrington, A. E., assistant secretary, Ministry of Education.

Rosling, D. M. D., assistant secretary, Home Office.

Wetton, E. D., registrar, Her Majesty's Land Registry.

O.B.E.

Barnes, H., lately chief constable, Blackpool borough police.

Blood, Alderman J. W., lately chairman, Rutland county council.

Clidero, H. A., town clerk, Bridgwater borough council.

Collins, F. S., chief executive officer, Prison Commission.

Craine, J. H., chief clerk, Bow Street magistrates' court.

Dalby, A., H.M. Inspector of Schools, Ministry of Education.

Farrimond, T. A., chairman, Lancashire Urban District Councils' Association.

Hawkins, Alderman, T. J., Hereford county council.

O'Keefe, J. A., chief engineer, public control department, Middlesex county council.

Pickard, R., lately clerk to Sidmouth urban distric council.

M.B.E.

Ainsworth, W., superintendent and deputy chief constable, Cambridge city police.

Bissell, B., probation officer, Dudley.

Graham, J., chief public health inspector, Manchester corporation.

Hooker, E., governor, H.M. Borstal Institution, East Sutton Park, Maidstone.

Parsons, E. G., senior clerk, Devon county council.

Pirie, J. W., senior assistant district auditor, Ministry of Housing and Local Government.

Stevens, R. B., town clerk, Holywood urban district council, Co. Down.

Thompson, Reverend T., lately member, Whitchurch urban district council.

Tompkins, V. W. R., commandant, special constabulary, Metropolitan police.

Waddington, F., chief superintendent, Lancashire constabulary.

Walford, J. R. C., legal assistant, Ministry of Pensions and National Insurance.

Walker, A., chief superintendent, Metropolitan police.

Walpole, F. W., lately clerk, Godstone rural district council.

Wilson, F. S., road safety officer, borough of Slough.

Wilson, J. W., senior executive officer, H.M. Stationery Office.

Jones, E. G., commandant, Halifax special constabulary.

QUEEN'S POLICE MEDAL FOR DISTINGUISHED SERVICE

Rutherford, H., chief constable, Surrey constabulary.

Williams, Lt.-Col. W. J., chief constable, Gwynedd constabulary.

Walker, R. W., chief constable, Eastbourne borough police.

Galbraith, N., chief constable, Monmouthshire constabulary.

Evans, A., assistant chief constable, Derbyshire constabulary.

Brown, G. W., assistant chief constable, Northumberland constabulary.

Hodges, G. H., chief superintendent, Essex constabulary.

Metcalfe, G., chief superintendent, West Riding constabulary.

Findlay, A. G. C., chief superintendent, Metropolitan police.

Todd, G. A., chief superintendent, Lincolnshire constabulary.

Best, W. C. F., chief superintendent, Metropolitan police.

Winn, J., superintendent, Metropolitan police.

"TALK OF WILLS"

The controversy over the Wills (Publication) Bill looks like becoming a contest between the desire of some testators, and their beneficiaries, for reasonable privacy, and the vested interests of the press. Introduced by a private member, the Bill (at a Friday sitting) was given a second reading by a vote of 30 for and 26 against. The Solicitor-General had left the decision to a free vote.

The Bill would make it unlawful for newspapers to publish (*a*) any particulars of the will of a deceased person (other than its date, the executors named, and any bequest to charity or to certain public bodies); or (*b*) the amount of the estate or any duty thereon—if the will contained an express wish that such particulars should not be published. There is a saving, *inter alia*, for publication not less than 25 years after the testator's death (when the matter would have ceased to be "news"). A further saving would permit the executors to authorize the publication of details necessary for the purpose of tracing the whereabouts of any beneficiary.

A proprietor, editor, master-printer or publisher of any newspaper publishing the prohibited particulars would be liable, on a first conviction, to a fine, not exceeding £100, and on a second conviction to a like fine, or four months' imprisonment, or both.

The introducer of the Bill spoke of the harm that might be done by publishing details of a will in the press, particularly in local newspapers circulating in country villages where society was "personal and intimate, and even the publication of the smallest legacy could have unhappy and disastrous

consequences." He asked the House to bear in mind "the vast increase in gossip-writing in the last two years"—surely one of the most disreputable of all vocations. The seconder (from the other side of the House) gave some examples of family unhappiness caused by gossip about a testator's affairs. To the contrary it was argued that the passing of the Bill into law would be "a particularly unfortunate restriction on the freedom of the press," because a will would be "already public" at the time its details appeared in a newspaper. The logic of this argument is not apparent, since the will is "already public" only in the sense that any person may inspect it and obtain a copy, on payment of the appropriate fee, at a registry after probate. Because some inquisitive person might take such steps with no motive other than idle curiosity is no argument for blazoning the details in headlines among the millions; nor are we greatly impressed by the opinion of *The Times* that the Bill is "an open threat to the established working of our democratic society."

If the law were amended, in other respects, to permit publication of details of the property and income of a living person, and of the tax assessed upon him (as happens, for example, in Norway), there would be loud protests on all sides; rightly or wrongly, such information is a carefully cherished secret, strictly respected by the tax-gatherer. There appears to be no reason in portraying the opposite course as a virtue, when death is the excuse. In any event, it is very simple for a testator to keep from publicity the value of the property passing on his death, by making a settlement, preserving for himself a life or other interest; the bulk of his fortune may well be so dealt with; and the only clue (if some "nosey-parker" should bother to work it out) may be the high rate of duty payable on his "free" estate because of the rules of aggregation (or, as some executors have been heard to call it, "aggravation"). It is not, so far as we know, the practice to permit public access to details of settlements made *inter vivos*; and, though (as one opponent of the Bill admitted) certain sections of the press are prone to send their "news-hawks to descend upon people and to badger them mercilessly," such misguided activity would scarcely be equal to the inventing of particulars and values of life-interests and remainders.

Whenever we read complaints of "threats to the working of our democratic society," we wonder whether the threat most dreaded is not the blocking of channels whereby sensationalism and gossip-mongering, often in the worst of taste, are fed. No serious evil has resulted from the Judicial Proceedings (Regulation of Reports) Act, 1926, which prevents prurient minds from wallowing in the cesspools of divorce court evidence. Nor has there arisen any danger to democracy because there must be no newspaper publication of "domestic proceedings" in magistrates' courts. Nobody protests because the custody of and access to infants are usually discussed in chambers, nor because a wife's alimony, or a former wife's maintenance, is decided in the private room of a registrar. Even in a criminal prosecution, if it is brought under the Official Secrets Acts, the evidence is often heard *in camera*—a much more dangerous "threat to democracy," since the liberty of the citizen, and the encroachment of governmental power, are involved. More objectionable is the current practice of certain Government departments, on the ground of "privilege," to withhold documents from disclosure—a practice to which no stretch of the imagination can properly apply the phrase "in the public interest."

It is instructive to recall that the primitive customs from which the testamentary power is derived were closely connected with ancestor-worship. The oldest form of will in Roman law was that which enabled a sonless patrician to nominate a *haeres* whose duty it would be, on the nominator's death, to carry on the family rites. This and other customs led to the elaborate testamentary law developed by the Roman Praetors and Emperors, which has so considerably influenced most modern legal systems.

Whatever be thought of publicity in these days, there is one celebrated case where it had disastrous results. Here is Mark Antony addressing the crowd after Julius Caesar's death:

> "But here's a parchment with the seal of Caesar;
> I found it in his closet; 'tis his will.
> Let but the commons hear this testament—
> Which, pardon me, I do not mean to read—
> And they would go and kiss dead Caesar's wounds
> And dip their napkins in his sacred blood;
> Yea, beg a hair of his for memory,
> And, dying, mention it within their wills,
> Bequeathing it as a rich legacy
> Unto their issue."

Antony, as Shakespeare paints him, is a cunning and specious "news-hawk"—a born gossip-monger—and he soon has the mob shouting:

> "The will! The will! We will hear Caesar's will."

The result of that day's work was the crushing of the "democratic" conspiracy, the formation of the Triumvirate; eventually, the death of the Roman Republic and the birth of the Empire. Might it not have been far less unsettling if this public announcement had been withheld, leaving any inquisitive citizen free to pay his 12 *denarii* and inspect the document in the unemotional atmosphere of the Roman equivalent of Somerset House?

A.L.P.

PERSONALIA

APPOINTMENTS

The Minister of Works, the Rt. Hon. Hugh Molson, M.P., has appointed Miss D. M. Hakim to be secretary of the Historic Buildings Council for England, and Mr. A. K. Mason to be secretary of the Historic Buildings Council for Wales. Both posts were previously held by Mr. N. Digney.

Chief Superintendent Donald Leslie Brown, commandant of No. 6 District Police Training Centre, Sandgate, Kent, has been appointed, from a Home Office approved short list of 10, as chief constable of Hastings, Sussex.

Mr. Thomas Charles Birkett Hodgson, assistant chief constable of Birmingham, has been chosen as the new chief constable of Berkshire. He joined the Lancs. constabulary in 1927. During the war he was police superintendent attached as laison officer to Headquarters, Western Base of the American Army.

Mr. J. H. N. Bourne, assistant clerk of Surrey county council since 1952, has been appointed deputy clerk of Cheshire county council. Mr. Bourne first went to Surrey as an assistant solicitor in 1949. He has previously served with Middlesex county council.

Mr. W. F. C. Godsell has been appointed clerk to Leyland, Lancs., urban district council. Mr. Godsell is at present clerk and solicitor to Alton, Hants., urban district council, and was previously a legal assistant with Coventry county borough, and an assistant solicitor with Chelmsford borough council. The vacancy arises as a result of the resignation of Mr. T. K. Clayton to enter private practice, as a solicitor.

Mr. Vincent Hull has been appointed as an additional probation officer for the Lancashire No. 14 probation area, as from January 1, last. Mr. Hull was formerly a probation officer in the city of Liverpool.

Mr. Geoffrey Alexander Mesney has been appointed a whole-time probation officer in the Warwickshire combined probation area. He has been assigned to the Warwick and Kenilworth petty sessional divisions.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*Power to prosecute—Police and public officials.*

By s. 277 of the Local Government Act, 1933, local authorities may give a general authority to their officers to prosecute, whereas in most cases it appears from the articles appearing in 116 J.P.N. 183 and 335 that if a prosecution is being conducted under delegated powers evidence should be given that the prosecutor has authority to prosecute the particular offence.

1. What is the position where the county council has delegated its powers to a chief inspector of police, who produces a general authority to prosecute in cases under the Customs and Excise Acts? He is not an officer of the local authority. Should he produce a resolution of the local authority or committee thereof authorizing the particular prosecution?

2. Again, a police inspector of the British Transport Commission lays information in respect of an offence contrary to one of the railway byelaws. He is not laying the information personally as a member of the public, but as a police inspector employed by British Transport. Is there anything in the Railway Acts that gives him a general authority to commence proceedings in respect of a breach of any of the byelaws, or should he be required to produce evidence of the authority to take the particular proceedings?

3. Again, what about s. 160 (5) of the Licensing Act, 1953, and s. 53 (1) of the National Insurance Act, 1946, referred to in *Price* v. *Humphries* (1958) 122 J.P. 423; [1958] 2 All E.R. 725? The wording of s. 160 (5) is that any officer appointed by the Commissioners of Excise may prosecute. Unlike s. 53 (1) of the other Act, s. 160 (5) does not say that consent is a pre-requisite to any proceedings. On the face of things it appears that both the chief inspector and the railway inspector can prosecute on producing a general authority, and without producing evidence of authority to prosecute the particular offence. This seems contradictory to the articles above mentioned. Incidentally, the wording of s. 53 (1) of the National Insurance Act, 1946, seems to enable the Minister to give a general authority, which I interpret to mean that the officer of the Ministry could be armed with a general authority to take proceedings in respect of all breaches under the National Insurance Act, in which event proof of consent or authority to take proceedings in a particular case would be unnecessary. Is that so?

APANA.

Answer.

The nature of the authority required by an official who lays an information must be ascertained by reference to the statute creating the offence. If that statute does not place a limit on the right to prosecute, an ordinary member of the public may do so, and a local government official or a police officer has the same right. For example, offences against a byelaw made under s. 249 of the Local Government Act, 1933, can be prosecuted by anybody; offences against byelaws made under the Public Health Acts, and against those Acts themselves, are subject to s. 298 of the Public Health Act, 1936, or s. 253 of the Public Health Act, 1875. There is therefore no inconsistency between *Price* v. *Humphries, supra,* and our articles mentioned in the query: *Price* v. *Humphries* was decided upon its own statute—though it also dealt with a general point, of the stage at which the informant's authority to prosecute should be looked into, if such authority is needed. Turning to the specific questions asked:

1. The inspector must have authority for the particular prosecution: *see Jones* v. *Wilson* (1918) 82 J.P. 277. This flows from the express limitation in s. 21 of the Inland Revenue Regulation Act, 1890, as applied to county councils. The authority can be given by a committee.

2. We do not know of any such general provision as is mentioned, but no such provision is necessary unless the Act authorizing the byelaw contains a limitation resembling those in the Public Health Acts. We think this unlikely. (The Railway Acts are voluminous and we have not searched them.) Compare *Snodgrass* v. *Topping* (1952) 116 J.P. 332.

3. Section 160 (5) of the Licensing Act, 1953, is concerned with offences against that Act only. It confers upon the officer appointed by the Commissioners a general statutory authority to prosecute; the section is different from that considered in *Jones* v. *Wilson, supra,* which relates to local taxation licences. It is also different from s. 53 (1) of the National Insurance Act, 1946, which does not itself confer any authority upon the Ministry's inspector or other officer, but enables the Minister to confer such authority, which can be either general or for the particular case.

2.—Housing Act, 1957, s. 30.—*Condemned houses well maintained.*

My council have received a claim for compensation as a well-maintained house, in respect of an individually unfit house on which a closing order made under s. 17 of the Housing Act, 1957, is operative. Part I of sch. 2 to the Act of 1957 prescribes the rules for ascertaining the amount to be paid in respect of well-maintained houses where claims for compensation are established under ss. 30 and 60 of that Act. It is appreciated that in the case of compensation payments arising out of s. 60 of the Act the multipliers specified in para. (3) of part I of sch. 2 with respect to rateable value have been increased by the Housing (Payments for Well-Maintained Houses) Order, 1956. Will you kindly give me your advice as to whether the multipliers can be regarded as being similarly increased in respect of claims arising out of s. 30 of the Housing Act, 1957. PANON.

Answer.

Yes, in our opinion. They applied by virtue of s. 3 (2) of the Slum Clearance (Compensation) Act, 1956, and they apply now by virtue of s. 191 (2) of the Housing Act, 1957.

3.—Land—*Costs of vendor's solicitor—Taxation.*

With reference to P.P. 7 at 122 J.P.N. 690, would you please say whether sch. 1 to the Solicitors' Remuneration Order, 1883, is not automatically excluded by para. 11 thereof? The purchaser was a local authority, and, for all one can tell, the purchase might have been compulsory. Or is this immaterial? DOUSER.

Answer.

The query did not suggest that the purchase was compulsory; we read the query as arising out of a purchase by agreement. The applicability of para. 11, *supra,* would then depend upon the statute under which the local authority were buying. If under s. 179 of the Local Government Act, 1933, the position is the same as if the purchase was compulsory, because s. 82 of the Lands Clauses Act, 1845, is incorporated: *In re Burdekin* [1895] 2 Ch. 136. But the purchase could have been under a local Act, or under a public general Act named in sch. 7 to the Local Government Act, 1933, in which case one would have to look at the particular Act to see whether para. 11 of sch. 1 to the order applied. We did not go into all this at p. 690 because the local authority's advisers evidently had the order before them, and their question related primarily to the time for exercising the option given by the order to the vendor's solicitor in a case where either scale may apply.

4.—Local Government—*Contracting by local authority for building work.*

In my council's district there are a number of almshouses which are owned by a local charity. I have been asked whether the council have power to repair and maintain the almshouses for the charity on a rechargeable basis. My council have a small direct labour section which could undertake the work. I believe it is the practice for some local authorities to carry out work such as maintenance of private sports fields on a rechargeable basis, but can find no authority for this. Can you inform me of any statutory or other authority which would cover this point? BARIL.

Answer.

We take it that the "rechargeable basis" is that the council make no profit, but are repaid the cost, so that in the end there is no charge upon their funds. This being so, it may be that audit action would not be taken. It may also be unlikely that, where work was done on a small scale, for a local charity, an application for an injunction would be made. But neither form of action can be considered impossible if (for example) local builders regarded it as the thin edge of the wedge. Even though there will be no loss to the ratepayers, and even though no ratepayer objected at audit, the auditor could disallow the expenditure, for which there is no authority.

5.—Local Government Act, 1933, s. 76—*Councillor belonging to club which has relations with council.*

Many members of my council are also members of various local organizations. Some hold offices in the organizations, such as president or vice-president; others have merely joined to support a cultural or sporting activity. Examples of the organizations are football, cricket, sailing, rowing, and skating clubs; amateur dramatic, operatic, and music societies.

Most of the organizations at some time or other make use of facilities provided by the council. Some use public playing fields or council-owned halls. The charges made by the council for these facilities are reviewed *en bloc* each year. Throughout the year, too, matters affecting the organizations come before the council—the letting of pitches or halls, special concessions, etc.

Doubt has been expressed whether the members have any interest under s. 76 (1) of the Local Government Act, 1933. Apparently all the relevant organizations are members' clubs and the liability of members is limited to their annual subscriptions. Nevertheless, a decision of the council might involve a club in increased cost or decreased income in such a way as to make an increase in members' subscriptions necessary.

Please advise whether membership of a club as envisaged in para. 1 above places an onus on a member to declare an interest:

(*a*) when a matter which in any way might affect the organization is before the council;

(*b*) only when the question before the council has an obvious effect on the finances of the organization; or

(*c*) never, so long as the member concerned assumes no greater responsibility in the organization than that of an ordinary member.

CERNAR.

Answer.

(*a*) Upon the question (as framed in such general terms) we should say generally, yes, because he is a member of a body which body has a direct pecuniary interest;

(*b*) This is a stronger case;

(*c*) On the wording of s. 76 (2) (*a*) we do not think this the important point.

6.—Pension—*Surrender of portion for widow—Statutory percentage increases.*

A local government official is compensated under the National Assistance (Compensation) Regulations, 1948. On attaining the age of 65 years he goes on an accrued pension, and is entitled to surrender a proportion of that pension towards a pension for his wife in event of his death. In this case the basic pension works out at £574 *p.a.* The Pensions Increase Act, 1956, granted a 10 *per cent.* increase of the basic pension. The officer concerned has surrendered £100 towards a pension for his wife. Should the 10 *per cent.* increase under the Act of 1956 be given on the amount of the basic pension, which is £574, or on the reduced pension which is £474?

CISTORA.

Answer.

In our opinion, on the £574.

7.—Public Health Act, 1936, s. 92—*Nuisance—Abatement notice requiring business to stop.*

Premises occupied as a maggot breeding farm are creating a nuisance from smells, and my council are considering serving an abatement notice under s. 92 (*d*) of the Act of 1936. In the description of work to be done it has been suggested that the notice can require the occupier "to cease the use of the premises for the purpose of maggot breeding." Do you consider that such a requirement would be within the provisions of the Public Health Act, 1936.

PUNGENT.

Answer.

No, in our opinion. The notice may require him to abate the nuisance and prescribe works and steps necessary. It is possible that the expense of the necessary works and steps may make the maggot breeding unprofitable, but a requirement (in terms) to stop the business is, in our opinion, beyond the scope of the section.

8.—Rating and Valuation—*Discount for prompt payment—Charge under statute to be part of rate.*

A local authority have undertaken themselves to provide and maintain dustbins for the reception of house refuse and have made an annual charge of 5*s.* in respect of each dustbin so provided, pursuant to s. 75 (3) of the Public Health Act, 1936, as amended. The local authority have also passed a resolution directing that owners of certain classes of property defined in the resolution shall be rated, and that an allowance of 10 *per cent.* shall be made if the owner pays before a fixed date, pursuant to s. 11 (1) of the Rating and Valuation Act, 1925, as amended. X, the owner of properties of the class defined in the resolution made under the Act of 1925, has been charged 5*s.* in respect of each dustbin supplied to his properties. These charges have been listed as separate items on the general rate demand note, and X has paid the amount of the charges, less 10 *per cent.*, before the date fixed by the local authority for payment.

The local authority are now applying for a distress warrant against X in respect of the balance of charges they allege is still owing by him, namely an amount equivalent to 10 *per cent.* of the annual charges on his various properties. X contends that this amount is not due and that he is entitled to an allowance of 10 *per cent.*, not only on his general rates, but also on the dustbin charges.

Having regard to the fact that the local authority have themselves passed the resolution under s. 11 (1) of the Act of 1925 as amended, and have also elected to recover the dustbin charges "as part of the general rate in respect of the premises for which the dustbin has been provided," is X entitled to an allowance of 10 *per cent.* if the charges are paid on or before the fixed date? Alternatively, can it be argued that, at the time of the issue of the demand note, the local authority are only attempting to collect the charges and that these are not "recovered" until some legal process is invoked and, therefore, are not deemed "part of the general rate" until that time? Do you know any authorities on this point?

AMOS.

Answer.

The point is arguable and we have not found any authority. Upon the construction of s. 75 (3) of the Public Health Act, 1936, we see no reason to treat the words "may be recovered as part," as relating only to proceedings for enforcement after neglect to pay the rate. The verb "recover" is commonly used as meaning "require payment," and we prefer the view here that the charges are "part" of the rate for purposes of discount as well as for purposes of enforcement.

9.—Road Traffic Act, 1930—*Public service vehicles—Fares—Undertaking receiving other revenue.*

A statutory transport undertaking operates both trolley bus and omnibus services, the former running at a loss, the latter running at a profit and therefore subsidizing the former. The licensing authority for public service vehicles fixes the fares for omnibuses under the Road Traffic Act, 1930. Trolley bus fares, on the other hand, are fixed by the undertaking itself by virtue of s. 2 (4) of the Transport Charges (Miscellaneous Provisions) Act, 1954, and are not the concern of the licensing authority. This being so, is it legally correct for the licensing authority to take into account the losses on trolley bus operations when considering whether to raise the authorized fares on the omnibus services, when the omnibus operations are already showing a sufficient operating profit to cover all necessary items attributable to the omnibus operation, including depreciation and operator's profit. If not, what is the proper writ by means of which the licensing authority may be prevented from taking into account matters which they should not take into account when fixing omnibus fares?

C.R.U.D.

Answer.

The Traffic Commissioners are empowered by s. 72 (4) (*a*) of the Act of 1930 to secure that fares on the bus services will not be unreasonable; in considering what is reasonable they must look at the whole financial position of the undertaking, though this depends in part upon revenue arising in a "reserved area," and therefore outside the control of the Commissioners, by the operation of s. 2 (4) of the Act of 1954. We are fortified in this opinion by comparing paras. 11 to 13 in part III of sch. 1 to the Act of 1954.

Whether, having examined the whole position, they are right to allow increased bus fares when the undertaker does not increase the uncontrolled fares, is a question of merits. The appropriate writ (or rather order) for testing the point of law, if desired, would be *certiorari*, if the Commissioners had dealt with the case, or prohibition if they had not yet done so. But we doubt whether the court would grant either, seeing that the decision of the Commissioners can be appealed against under s. 81 of the Act of 1930.